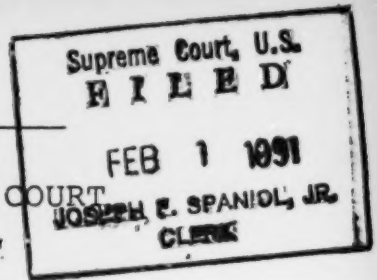


NO. 90-1030

UNITED STATES SUPREME COURT
OCTOBER 1990 TERM



KENNETH A. KOZEL,)	ON PETITION FOR
)	WRIT OF CERTIORARI
PETITIONER,)	FROM THE UNITED
)	STATES COURT OF
v.)	APPEALS FOR THE
)	SEVENTH CIRCUIT
UNITED STATES OF AMERICA,)	
)	
RESPONDENT.))	

PETITIONER'S SUPPLEMENTAL BRIEF

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ARGUMENT

(8) A criminal contempt conviction requires findings of willfulness and guilt beyond a reasonable doubt.

(a) A good faith belief, no matter how unreasonable, will prevent a finding of guilt in a crime requiring a willful action.

Since the filing of the petition for writ of certiorari, the United States Supreme Court has released a decision in the case of Cheek v. U.S., No. 89-658. In this case, the court set aside the tax evasion conviction of Mr. Cheek, an American Airlines pilot, who had not filed federal income tax returns for six years. Mr. Cheek believed that the federal tax system is unconstitutional.

The Supreme Court held in the Cheek case that a good-faith belief, no matter how unreasonable, will prevent a finding of guilt in regard to a crime requiring a willful action.

As stated in the petition for writ of certiorari in the case at bar, there must be a willful violation of a definite and specific

order to support a conviction for criminal contempt. U.S. v. Joyce, 498 F. 2d 592 (7th Cir. 1974); U.S. v. Twentieth Century Fox Film Corp., 882 F. 2d 565 (2d Cir. 1989).

In the case at bar the defendant was convicted of criminal contempt for appearing in a federal court while allegedly not being admitted to local federal bar. The trial judge specifically found that the defendant "might have thought he was (admitted to the Central District Bar) but Mr. Kozel apparently was not." (T. 192, Vol. 6, 9-6-89).

The trial judge's specific finding of the defendant's good-faith belief that he thought he was admitted to the bar is corroborated by the fact that nowhere in the written decision or in the trial transcript does the trial judge find the defendant guilty beyond a reasonable doubt. Falstaff Brewing Corp. v. Miller Brewing Co., 702 F. 2d 720 (CA, Cal. 1983).

The trial judge's statement from the bench that the defendant might have thought he was admitted to the Central District Bar carries

as much weight as a written decision, as stated in the case of First Tier Mortgage v. Investors Mortgage Insurance, No. 89-1063. This United States Supreme Court case was also released after the filing of the petition for writ of certiorari in the case at bar.

The defendant was found guilty of a second count of criminal contempt for not appearing in court on February 9, 1989, to answer the original charge of not being admitted to the Central District Bar. The defendant was not required to appear in court because the initial trial judge disqualified himself from the case at this hearing (T. 23, 24, 2-9-89). Federal Rule of Criminal Procedure 43(c)(3) provides that a defendant need not be present at a hearing at which only a question of law is presented.

The issue of judicial disqualification was the only issue presented at the hearing on February 9, 1989. The initial trial judge did in fact disqualify himself from the case at this hearing. Therefore, it was erroneous to find the defendant guilty of criminal contempt for

willfully failing to appear at the hearing on February 9, 1989, when the defendant was under no obligation to attend the hearing pursuant to Rule 43(c)(3). A willful finding could not be made as a matter of law based on Rule 43(c)(3).

The lack of willfulness in regard to the second count is again corroborated by the subsequent trial judge's complete failure to find the defendant guilty beyond a reasonable doubt.

In summary, both of the defendant's convictions for criminal contempt should be reversed since his actions were not willful.

WHEREFORE, the petitioner prays that this court grant the petition for writ of certiorari and reverse the decision of the Court of Appeals.

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BY

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